

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

UNITED STATES OF AMERICA . . . Criminal No. 1:10cr200
vs. . . . Alexandria, Virginia
LEE BENTLEY FARKAS, . . . October 22, 2010
Defendant. . . . 9:00 a.m.
.

TRANSCRIPT OF MOTION HEARING
BEFORE THE HONORABLE LEONIE M. BRINKEMA
UNITED STATES DISTRICT JUDGE

APPEARANCES:

FOR THE GOVERNMENT:

PAUL J. NATHANSON, AUSA
United States Attorney's Office
2100 Jamieson Avenue
Alexandria, VA 22314
and
BRIGHAM Q. CANNON, ESQ.
PATRICK F. STOKES, ESQ.
United States Department of Justice
Criminal Division, Fraud Section
1400 New York Avenue, N.W.
Washington, D.C. 20005

FOR THE DEFENDANT: WILLIAM B. CUMMINGS, ESQ.
William B. Cummings, P.C.
P.O. Box 1177
Alexandria, VA 22313

OFFICIAL COURT REPORTER: ANNELIESE J. THOMSON, RDR, CRR
U.S. District Court, Fifth Floor
401 Courthouse Square
Alexandria, VA 22314
(703)299-8595

(Pages 1 - 10)

COMPUTERIZED TRANSCRIPTION OF STENOGRAPHIC NOTES

P R O C E E D I N G S

(Defendant present.)

3 THE CLERK: Criminal Case 10-200, United States of
4 America v. Lee Bentley Farkas. Would counsel please note their
5 appearances for the record.

6 MR. NATHANSON: Good morning, Your Honor. Paul
7 Nathanson, Brigham Cannon, and Patrick Stokes for the United
8 States.

9 THE COURT: Good morning.

10 MR. NATHANSON: Mr. Cannon will be handling the matter
11 in court today.

12 THE COURT: All right.

13 MR. CUMMINGS: Good morning, Your Honor. William
14 Cummings for the defendant. Mr. Farkas is here with me.

15 THE COURT: All right. Mr. Cummings, this is your
16 motion to amend the terms and conditions of defendant's pretrial
17 release. We've read the motion, we've read the opposition from
18 the government, and we're fully -- and I've talked with Pretrial
19 Services about this.

20 Your client in my view was correctly assessed to be a
21 flight risk by the magistrate judge who first heard this case down
22 in Florida. The nature of the crime, the potential exposure that
23 he has if convicted are -- and his resources, even though many are
24 tied up, there appear to be some that are not, all strongly
25 support the government's view and the finding of the magistrate

1 judge that there is flight risk, and your client has the following
2 choice: He can be stepped back and sit in jail until this case is
3 over, or he's going to have to comply with the conditions of
4 release, one of which is GPS monitoring.

5 Now, I talked with Pretrial this morning, because if, in
6 fact, the unit is hurting his leg or chafing the leg, Pretrial can
7 remove it and put it on his other leg, in other words, to give the
8 leg a break, and certainly that could be accommodated, but the GPS
9 monitoring is the only reasonably reliable system that they have
10 unless you have come up with some other device that would give an
11 immediate signal if the bracelet is tampered with. It would give
12 the authorities the best shot at, quite frankly, keeping your
13 client from fleeing or finding him.

14 So I've read your papers, but I don't find any
15 compelling argument or issue in them. I'm also concerned even
16 though it's been sort of tried to be made to be de minimis, the
17 \$80,000 of gym equipment that was traded for credit on the overdue
18 rent.

19 MR. CUMMINGS: The 80,000 was the rent. The equipment
20 was worth about 5- or 10,000 dollars.

21 THE COURT: Well, it depends on how you value something,
22 but in any case, it was equipment that should not have been
23 bartered or sold or exchanged without clearance from Pretrial
24 Services and/or the Court, because it was a condition of the bond
25 that there would not be any sale of assets, and that clearly

1 happened, and, you know, you acknowledge that, which is the proper
2 thing to do.

3 And there are other issues about whether there's been
4 complete frankness, one of which, by the way, which is not in any
5 of the papers, that concerns me is I keep hearing rumblings about
6 Mr. Farkas traveling to Kentucky to talk to an attorney. He's
7 been up here in Washington, D.C., talking to attorneys.

8 Now, you're his court-appointed attorney, but if there
9 are other attorneys working for him on this case whom he is
10 paying, then we have another problem.

11 MR. CUMMINGS: There are other attorneys he wants to
12 pay, Your Honor, and because they continue to hope to get into
13 this case with the D&O insurance, they have to be monitoring this
14 case, and so they are monitoring this case, and I'm hoping that
15 they will find the ability to get in this case and remove me from
16 a CJA matter.

17 THE COURT: And reimburse the CJA fund.

18 MR. CUMMINGS: Oh, they understand that obligation
19 there, absolutely, Your Honor, no question about that, but, you
20 know, I keep hearing that they're almost there, but it hasn't been
21 accomplished yet.

22 THE COURT: All right.

23 MR. CUMMINGS: So I don't think it's inappropriate for
24 them to be staying with him, and these other people have not
25 yet -- several of them, I don't know if anyone's been paid

1 anything, but certainly they -- some I know have not been paid,
2 but they have been -- they've been counseled to see whether or not
3 they would get into the case if there was funds to pay them, and I
4 think that's an appropriate thing for attorneys to do is to meet
5 with people and see whether or not they can get a feel for the
6 case and offer some ideas and suggestions in order to persuade the
7 client that they could be helpful to them and do that with the
8 expectation that they will be paid if and when the funds are
9 available.

10 THE COURT: All right.

11 MR. CUMMINGS: This is a difficult situation.

12 THE COURT: If that's the case, that's fine, but my
13 concern is, you know, if there's money going to attorneys --

14 MR. CUMMINGS: Oh, I understand that.

15 THE COURT: Yeah.

16 MR. CUMMINGS: I understand that, and he understands
17 that, but I did want to take, take some issue with the Court's
18 statement that the magistrate judge felt that there was a risk of
19 flight. I think the magistrate judge in his opinion said that
20 basically the fact that the government now has tied up all of his
21 assets pretty well eliminates any risk of flight. So he says in
22 his memorandum opinion.

23 THE COURT: Well, he may have said that, but the order
24 that he entered reflects that he still felt that the GPS
25 monitoring was appropriate, and regardless, I mean, ultimately,

1 the case is now in this court. I've got the responsibility for
2 making sure the defendant appears --

3 MR. CUMMINGS: No question about that.

4 THE COURT: -- and I don't find anything in the motion
5 that supports any change of conditions other than, as I said,
6 clearly if the, if the unit is bothering the leg that it's on, it
7 should be put on the other leg, and it may be that every month or
8 so it has to be switched back and forth if it's chafing or causing
9 some sort of a problem, but we have several defendants in this
10 court using that same unit, and we've not had complaints about any
11 leg injury.

12 So I just, I want you to know there is -- that option is
13 out there, and he can make that request of the pretrial people who
14 are monitoring him to change leg, but that unit is the unit we are
15 currently using in this court with some of our defendants.

16 MR. CUMMINGS: I understand, Your Honor. I want to
17 again point out, Your Honor, the dicta that was in the *Tortora*
18 case that the government cited in its brief and they quoted in
19 their brief is, I think, an interesting observation that the First
20 Circuit made in that the GPS device is good for an early detection
21 of flight, in other words, soon after the person is released, to
22 see whether or not he or she is going to, in fact, abide by the
23 terms and conditions.

24 This has now been four months, 120 days, and Mr. Farkas
25 has made no indication he's going anywhere except to the places

1 he's allowed to go, and he's diligently working on his offense.
2 So, I mean, it's a -- and he has no history of overseas travel of
3 any significant nature.

4 So I just wanted to point that out to the Court, that
5 it's now been a significant period of time when he has with the
6 exception, as you say, of that incident, and the factual pattern
7 was described to me where he basically was given little choice by
8 the landlord, and certainly he should have stopped and said: I'm
9 sorry, I have to call the court and see if I can abide by your
10 terms. He did not do that.

11 But, you know, it was 80,000 and a continuing increasing
12 rent that he couldn't pay versus just releasing the equipment,
13 which was of significantly less value than the overdue rent.

14 THE COURT: All right.

15 MR. CUMMINGS: So he certainly apologizes for not having
16 done that, but that's no indication of any flight risk. I mean,
17 it's a violation, yes, of the terms and conditions set forth, but
18 it's certainly of no indication of any increased risk of flight.

19 I realize I'm arguing against your order. I'm not
20 trying to, you know, to be unprofessional, but I just want to at
21 least set forth that he is doing all he can to abide by the
22 conditions, and we filed this motion and set forth our rationale
23 for why we wanted it and his reasons and the discomfort and the
24 inconvenience.

25 He has to spend one hour a day in front of an electric

1 plug while the thing is recharging. He can't take it off. He has
2 to stand there and plug it into an outlet because it's a
3 self-contained unit. So, I mean --

4 THE COURT: Well, there's no question it's a nuisance,
5 but it's a big improvement over sitting in a jail cell.

6 MR. CUMMINGS: We're not asking for that alternative.

7 THE COURT: All right, I didn't think you were.

8 Let me hear from the government. I'm not even touching
9 on this issue about whether there was full disclosure of all
10 financial interests to Pretrial Services. I don't think I need to
11 even get into that.

12 MR. CANNON: Then, Your Honor, the only thing I would
13 add is to the extent the defendant wants to come back and make
14 another petition for modification of the conditions of release, it
15 would be a perfect opportunity for the defendant to make that full
16 disclosure to the Court of all of his assets.

17 Given that one of the factors the Court must consider in
18 determining what condition or combination of conditions is
19 appropriate, the nature and characteristics of the defendant or
20 the history and characteristics of the defendant, that would be
21 relevant to the Court's decision or any future decision to modify
22 those conditions.

23 THE COURT: Well, is it the government's position after
24 all this time of investigation that you believe that there are
25 still financial assets of the defendant that you are not aware of?

1 MR. CANNON: I'm not willing to represent that we, we
2 know all of his assets. I mean, there are several transactions
3 that we outlined really in our detention memo more completely in
4 Florida but of the defendant moving assets to different
5 individuals or different entities over which we still believe he
6 has some control, and so maybe we'd never be able to fully
7 determine every single dollar that the defendant has control over,
8 but to the extent the defendant wants to make this motion, we
9 believe it would be appropriate for him to make the full
10 disclosure that, that he recognizes apparently in his response
11 motion that was not made to pretrial in Florida.

12 THE COURT: I'll not going to hear seriatim motion after
13 motion about the bond. The bond is what it is. I'm leaving it in
14 place. If you want to pursue with Mr. Cummings some further issue
15 about disclosure of assets, that's a separate matter, which is why
16 I did not use that issue as one of the bases for ruling as I'm
17 ruling today. I think that opens cans of worms that I don't need
18 to address.

19 So I've ruled for the reasons I've stated, Mr. Cummings.
20 I'm denying the motion, again advising you that if your client
21 needs to change legs, we can have that taken care of, and that's
22 the order -- that will be the order of the Court. Thank you.

23 MR. CUMMINGS: We won't need a separate order for that?
24 Mr. Arnett can tell that to Mr. Coomer; is that what you're
25 saying?

1 THE COURT: Mr. Arnett is in the courtroom right now --

2 MR. CUMMINGS: Right.

3 THE COURT: -- but in the order that I will issue today
4 that denied your motion, I will indicate that if the defendant is
5 having, you know, genuine physical problems with the unit on one
6 leg, he may request that Pretrial Services remove it from that leg
7 and put it on the other leg, all right? So that will be in the
8 order. And that can be done even on a monthly basis -- on a
9 routine basis if it's chafing or something like that that's
10 creating the problem.

11 MR. CUMMINGS: Thank you, Your Honor.

12 THE COURT: All right? Thank you.

13 You're free to go.

14 (Which were all the proceedings
15 had at this time.)

CERTIFICATE OF THE REPORTER

18 I certify that the foregoing is a correct transcript of the
19 record of proceedings in the above-entitled matter.

/ s /

Anneliese J. Thomson